IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8558 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILKUMAR MAHENDRASINH PUNJABI

Versus

COMMISSIONER OF POLICE, AHMEDABAD

Appearance:

MR AD DESAI for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondents No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 13.05.2003 passed by the Police Commissioner, City of Ahmedabad,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 13.5.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration the fact that an offence came to be registered against the petitioner on 9.5.2003 under Sections 66(b), 65(a)(e), 116(1)(b) and 81 of the Bombay Police Act, whereby foreign liquor worth of Rs. 1,67,800/- was seized from the possession of the petitioner. The detaining authority further relied upon two statements of two witnesses as recorded in-camera by sponsoring authority on 10.5.2003 and verified by the detaining authority on 11.5.2003, whereby the witnesses stated that on suspicion that the witness was informing the police about the activities of the petitioner, the witness was beaten while in the other statement also the same fact has been revealed. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr.A.D.Desai for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Though various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the ground that the detaining authority did not take into consideration the vital aspect of the matter so as to reflect non-application of mind vitiating the order impugned. In the grounds served upon the petitioner, it is categorically mentioned that the petitioner was in judicial custody in a crime registered against him when the order impugned came to be passed and served upon the petitioner. Anyhow, the detaining authority came to the conclusion that the petitioner was likely to be released on bail and was likely to continue his illegal activities and hence the order impugned came to be passed even if the petitioner was in judicial custody. In affidavit-inreply field by the detaining authority in para-7 it is mentioned that the detaining authority was well aware of the fact that the detenu was in judicial

custody, but according to facts and circumstances of the case as well as legal provisions applicable to the facts of the case, the detaining authority came to the conclusion that the petitioner was likely to be released on bail. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL & OTHERS, VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. On going through the record, it is found that there was no cogent material available with the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail. Therefore, the detaining authority did not take into consideration the vital aspect of the matter. The order impugned in this petition therefore is required to be quashed on the is ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 13.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair